

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

ALEX CHARLES GARROW III,  
individually and doing business as BIG  
BOY'S GAS & TOBACCO,

Defendant.

Case No. 8:13-CV-1549 (GTS)(CFH)

**ECF CASE**

**CONSENT JUDGMENT AND  
STIPULATION RE SETTLEMENT**

Plaintiff Philip Morris USA Inc. ("Philip Morris USA") and Defendant Alex Charles Garrow III, individually and doing business as Big Boy's Gas & Tobacco, having settled this action on the terms and conditions stated herein, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This is an action for: (i) infringement of registered trademarks in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114; (ii) false designation of origin and trademark and trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iii) unfair competition in violation of the common law of the State of New York; and (iv) trademark infringement in violation of the common law of the State of New York. This Court has personal jurisdiction over Philip Morris USA and Defendant, and subject matter jurisdiction over the matter in controversy between Philip Morris USA and Defendant. Venue in this judicial district is proper.

2. Philip Morris USA is the registered owner of the MARLBORO® trademark and various other trademarks incorporating the word MARLBORO®, including without limitation, multiple varieties of MARLBORO® brand cigarettes, and/or the MARLBORO Roof Design®

trademark, a pentagonal figure with a horizontal top and two vertical sides with two upwardly and inwardly sloping diagonals (collectively, the “MARLBORO® Trademarks”). The following MARLBORO® and MARLBORO®-related trademarks on the Principal Register of the United States Patent and Trademark Office, are all valid, subsisting and incontestable pursuant to 15 U.S.C. § 1065:

Registration Number	Registration Date	Trademark
68,502	April 14, 1908	MARLBORO
938,510	July 25, 1972	MARLBORO Red Label

3. Beginning in or about September 2013, and subsequent to Philip Morris USA’s adoption and first use of the MARLBORO® Trademarks, Defendant offered for sale and sold to the general public counterfeit MARLBORO® brand cigarettes at Big Boy’s Gas & Tobacco.

4. Philip Morris USA and Defendant have agreed to a full and final settlement of this action as contained herein and agreed to the entry of this Consent Judgment and Stipulation Re Settlement. Accordingly, it is hereby **ORDERED** that Defendant, and his agents, servants, and employees, and all persons in active concert or participation with Defendant, are hereby permanently enjoined from:

- (i) purchasing, distributing, selling, or offering for sale, cigarettes in packaging bearing counterfeits of the MARLBORO® Trademarks, or any of the various other trademarks incorporating the word MARLBORO® and/or the MARLBORO Roof Design® trademark, or assisting, aiding or abetting any other person or entity in doing so;

- (ii) using the MARLBORO® Trademarks or trademarks or trade dress that is confusingly similar therewith, except in connection with the sale and offering for sale of genuine MARLBORO® brand cigarettes; and
- (iii) interfering with or impeding the inspections authorized by Paragraph 5 hereof in any way.

5. Defendant further agrees to cooperate in good faith with Philip Morris USA in its investigations of counterfeit sales at his retail establishments, including, without limitation, by (a) permitting representatives and/or designees of Philip Morris USA to conduct inspections, without notice, of Defendant's cigarette inventories to determine whether any cigarettes bearing the MARLBORO® Trademarks are counterfeit (such inspections may proceed at any of Defendant's retail establishments during the hours, and on any day, Defendant's retail establishments are open for business) and to retain possession of any such cigarettes that are determined to be counterfeit by Philip Morris USA or its designee; (b) responding to reasonable requests for information and documents about Defendant's suppliers or other sellers of genuine or counterfeit MARLBORO® brand cigarettes; and (c) reasonably responding to requests for information and documents by Philip Morris USA's representatives and/or designees in connection with their investigations of any suppliers or other sellers of genuine or counterfeit MARLBORO® brand cigarettes.

6. The Court enters judgment for Philip Morris USA and against Defendant in the amount of \$100,000.00 in statutory damages, pursuant to 15 U.S.C. § 1117(c).

7. The terms of this Consent Judgment and Stipulation Re Settlement shall be enforceable against Defendant and any persons working in concert with him and any retail outlet Defendant may own or operate now or in the future.

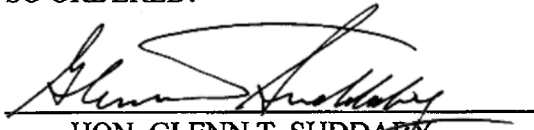
8. Defendant agrees to waive all claims in this action against Philip Morris USA with prejudice, whether they are asserted or not. All claims asserted in this action by Philip Morris USA for monetary recovery from Defendant are hereby dismissed with prejudice. There being no just reason for delay, the entry of this Consent Judgment and Stipulation Re Settlement by the United States District Court constitutes entry of final judgment as to all remaining claims asserted in this action by Philip Morris USA against Defendant pursuant to Federal Rule of Civil Procedure 54(b). Philip Morris USA and Defendant will each bear their own costs and attorneys' fees.

9. Upon entry of this Consent Judgment and Stipulation Re Settlement, any bond or undertaking Philip Morris USA has filed in this action as to Defendant shall be deemed exonerated and the original of such bond or undertaking shall be returned to Philip Morris USA.

10. The Court shall retain jurisdiction to enforce this Consent Judgment and Stipulation Re Settlement. If Defendant shall be alleged to have breached the terms of this Consent Judgment and Stipulation Re Settlement, Philip Morris USA shall have the right to reopen this matter upon motion filed and heard on an expedited basis. If this matter is so reopened, Philip Morris USA may pursue any and all remedies it may have against Defendant for breach of the terms of this Consent Judgment and Stipulation Re Settlement. Nothing in this Consent Judgment and Stipulation Re Settlement shall be interpreted to limit Philip Morris USA's rights to pursue separate legal action against Defendant on the basis of his sale, offering for sale, or distribution of counterfeit MARLBORO® brand cigarettes on or after the date of this

Consent Judgment and Stipulation Re Settlement. This action is the only action pending before this Court between Philip Morris USA and Defendant.

SO ORDERED:

  
HON. GLENN T. SUDDABY  
UNITED STATES DISTRICT JUDGE

Dated: 7/17/14

The individuals executing this Consent Judgment and Stipulation Re Settlement represent or confirm that they are duly authorized to do so, and are similarly authorized to bind each of the signatories to this Consent Judgment and Stipulation Re Settlement.

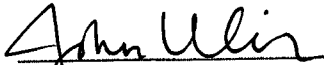
CONSENTED TO:

Dated: July 17, 2014

Dated: \_\_\_\_\_

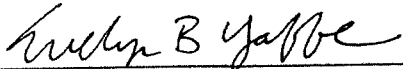
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Hogansburg, New York 13655

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CONSENTED TO:

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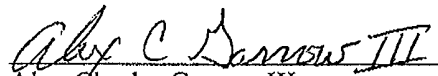
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